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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91183324
Party	Plaintiff L.I.F.E., LLC
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of  
Application Serial No. 77219627  
Filing Date: 2007-06-29  
Mark: LIFE IS LOVE  
Published: 2007-12-04

L.I.F.E., LLC.

Opposer,

v.

Benedict III, Howard M.,

Applicant.

**OPPOSITION # 91183324**

**OPPOSER'S MAIN BRIEF**

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**March 17, 2010**

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## **DESCRIPTION OF THE RECORD**

The evidence of record consists of the following:

1. Opposer's Notice of Opposition
2. Applicant's Answer
3. Opposer's Three U.S. Registrations/Notice of Reliance
4. Applicant's Intent-to-use Application

## **OPPOSER'S TRIAL BRIEF**

### **Introduction**

This Memorandum is respectfully submitted by Opposer L.I.F.E., LLC. (hereinafter "Opposer") in support of its Opposition to an intent-to-use applications filed by Applicant Benedict III, Howard M., (hereinafter "Applicant") to register the trademark LIFE IS LOVE for Shirts; Hats; Sweaters; Jackets; Pants; Belts; Sandals in Class 025. As discussed herein, because issuance of registration to Applicant for this mark is likely to cause confusion with Opposer's registered trademarks and cause significant harm to Opposer, Applicant is not entitled to Registration and this opposition should be sustained.

The Pleadings are of record in this case, including the Notice of Opposition and Answers. Opposer's Notice of Reliance was filed and served August 19, 2009. The Applicant has not taken testimony nor offered any evidence in defense of its application.

### **Facts**

As discussed below, Opposer's marks have been registered and in use for the sale of clothing and various items well prior to Applicant's filing of its intent-to-use application and a likelihood of confusion would undoubtedly arise if Applicant is permitted to register and use the mark LIFE IS LOVE for nearly identical goods.

On June 29, 2007, Applicant filed a U.S., intent-to-use trademark application (Application Serial No. 77219627) to register the mark LIFE IS LOVE for “Shirts; Hats; Sweaters; Jackets; Pants; Belts; Sandals” in class 025 (hereinafter the “ ‘627 App.”). Subsequently, on December 4, 2007, the ‘627 App was published for opposition. Opposer filed its Notice of Opposition on April 2, 2008. Applicant filed its Answer on May 8, 2008, (hereinafter “Answer”).

Opposer is the owner of the following federal registrations for its marks, entered into evidence as part of its Notice of Reliance filed and served August 19, 2009:

1. Opposer’s Registration ‘644

Serial #: 78-429116  
Reg #: 3077644  
Trademark: L.I.F.E. LOVE IS FOR EVERYONE (and design)  
Goods: Clothing, namely shirts, pants, shorts, skirts, dresses, pajamas, underwear, jackets, belts, caps, wraps, aprons, bandanas, bathing suits, and hats in class 25 (as well as other classes)  
Status: Registered.  
Filing Date: 2004-06-03  
Registration Date: 2006-04-04

2. Opposer’s Registration ‘059

Serial #: 78-736428  
Reg #: 3150059  
Trademark: L.I.F.E. LOVE IS FOR EVERYONE (and design)  
Goods: Bracelets; Clocks; Costume jewelry; Earrings; Jewelry; Jewelry chains; Jewelry watches; Jewelry, namely, amulets; Necklaces; Pins being jewelry; Rings being jewelry; Watches in class 14  
Status: Registered.  
Filing Date: 2005-10-19  
Registration Date: 2006-09-26

3. Opposer’s Registration ‘578

Serial #: 78-736504  
Reg #: 3336578  
Trademark: L.I.F.E. LOVE IS FOR EVERYONE  
Goods: Caps; Hats; Jackets; Shirts in class 25; Costume jewelry; Jewelry; Pins being jewelry in class 14; non-fiction and fiction books in the field of inspirational stories; Decals; Greeting cards in class 16

Status: Registered.  
Filing Date: 2005-10-19  
Registration Date: 2007-11-13

and the following common law trademarks/service marks:

L.I.F.E. and L.I.F.E. LOVE IS FOR EVERYONE for clothing and other goods as listed above,  
(hereinafter collectively Opposer's Marks).

Applicant admits in the Answer filed May 8, 2008 that Opposer is the owner of these registrations (*See*, Answer ¶1) and these common law trademarks/service marks. (*See*, Answer ¶1).

Well prior to Applicant's use and/or filing of an application for the trademark LIFE IS LOVE, Opposer filed for and used and has continued to use its marks in interstate commerce, for a wide variety of goods and services, including clothing. Opposer's filing date and use of Opposer's marks predates any use by Applicant of his LIFE IS LOVE trademark on clothing in interstate commerce. Applicant admits in the Answer filed May 8, 2008 that Opposer has priority (*See*, Answer ¶ 2, 4).

### **Argument**

An opposition must be sustained if the Opposer establishes that it has priority and a likelihood of confusion would result by issuance of a registration to the applicant. 15 U.S.C. Sec. 1603. Since, in this case, Opposer has filed for and used its marks prior to the Applicant's intent-to-use application (as admitted by Applicant), and the goods are nearly identical, there is clearly a likelihood of confusion, and therefore, this Opposition must be sustained.

Since Applicant admits in the Answer filed May 8, 2008 that Opposer has priority (*See*, Answer ¶ 2, 4), priority is not an issue. Moreover, Opposer hereby relies on its filing dates of its registrations, each of which predate Applicant's filing date for priority. Applicant has not introduced into record any evidence to the contrary.

Likelihood of confusion is often viewed through the factual inquiry set forth in In re E.I. DuPont de Nemours & Co., 177 U.S.P.Q. 563 (C.C.P.A. 1973). Undoubtedly, the two (2) most important DuPont factors are (i) Similarity of the Marks; and (ii) Similarity of the Goods and Channels of Trade. See, Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 U.S. P.Q. 24, 29 (C.C.P.A. 1976) ("The fundamental inquiry mandated by §2d goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.") Here, both of these factors overwhelmingly favor the Opposer.

(i) Similarity of the Marks

The standard for determining the similarity of marks involves evaluating the similarities in sight, sound and meaning. Similarities in anyone of these three components may suffice for the marks to be deemed confusingly similar. In re Swan, Ltd., 8 U.S.P.Q.2d 1534, 1535 (T.T.A.B. 1988); In re Lamson Oil Co., 6 U.S.P.Q.2d 1041, 1042 *nA* (T.T.A.B. 1987). While marks must be compared in their entireties, one feature may be more significant in creating a commercial impression. In re Dixie Restaurants Inc., 105 F.3d 1405, 41 U.S.P.Q.2d 1531 (Fed. Cir. 1997).

Applicant's mark, LIFE IS LOVE and Opposer's Marks are very similar in sight, sound, and commercial meaning. Specifically, Applicant's mark, LIFE IS LOVE, contains identical terms to terms in Opposer's Marks. Moreover, both marks begin with these terms, Applicant's being "LIFE IS LOVE" and Opposer's being "L.I.F.E. LOVE IS ...," making it the dominant portion of the respective marks. Accordingly, the marks at issue herein are highly similar if not nearly identical in part. Generally, a likelihood of confusion is not avoided between otherwise confusingly similar marks merely by the junior user adding a descriptive or weak element to the senior user's mark, and the dominant portion of both marks remains the same. See, e.g., Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); In re Chatam International Inc., 380 F.3d 1340, 1343, 71 USPQ2d 1944, 1946 (Fed. Cir. 2004) ("Viewed in their entireties with non-dominant features appropriately discounted, the marks [GASPAR'S ALE for beer and ale and JOSE GASPAR GOLD for tequila] become nearly identical").

Likewise, in the present case, Opposer's mark encompasses Applicant's mark in its entirety. Although, Opposer's Marks include the term FOR EVERYONE, the general sight, sound and meaning of these terms remains unchanged. *See, e.g., In re Dr. Mitchell Swartz*, 2002 TTAB LEXIS 215 (TTAB 2002) (stating that the important question was whether the compared marks create the same commercial impression and that "[t]he test is not whether the marks can be distinguished in a side-by-side comparison, but whether they are sufficiently similar in their overall commercial impression so that confusion as to the source of goods marketed under the respective marks is likely to result").

Based on the above, no reasonable fact finder would disagree that the entireties of the respective marks are highly similar in sight and sound, and in commercial meaning. Accordingly, this factor weighs heavily in favor of Opposer.

(ii) Similarity of Goods and Channels of Trade

It is well established that the more similar or closely related the goods or services, the greater the likelihood of confusion. *See, Exxon Corp. v. Texas Motor Exch. of Houston, Inc.*, 628 F.2d 500, 505, 208 U.S.P.Q. 384, 388 (5th Cir. 1980). Moreover, the more closely related the goods or services of respective marks, the more the showing needed under the remaining likelihood of confusion factors is reduced. *See, Banff, Ltd. v. Federated Dep't Stores, Inc.*, 6 U.S.P.Q.2d 1187, 1192 (2d Cir. 1988). The test for proximity of the goods or services is only that they be "similar in use and function." *AMF Inc. v. Sleekcraft Boats*, 599 F.2d 341, 204 U.S.P.Q. 808, 815 (9th Cir. 1979).

The goods associated with Applicant's mark (Shirts; Hats; Sweaters; Jackets; Pants; Belts; Sandals) are closely related, if not identical, to Opposer's goods (Caps; Hats; Jackets; Shirts in Opposer's Registration '504, for example).

In this case, the identification of goods and channels of trade recited in the Applicant's application are unrestricted. Applicant's goods description reads simply: "Shirts; Hats; Sweaters; Jackets; Pants; Belts; Sandals." Therefore, the Board must presume that Applicant's goods move through all of the usual channels of trade for clothing, and to all potential purchasers thereof. *ReMax of America, Inc. v. Realty Mart, Inc.*, 207 U.S.P.Q. 960, 965 (T.TAB. 1980) It must therefore be accepted that most of the goods and all the channels of trade in this case are also nearly identical.

### **Conclusion**

In this case, the dominant portion of the parties' marks, and the goods and channels of trade, are all identical or nearly so. On this record, which stands uncontested by any testimony or other evidence by Applicant, Opposer respectfully suggests that a likelihood of confusion has been conclusively established, and that the Board should grant this Opposition, and refuse registration to Applicant.

Respectfully submitted,  
Beusse Wolter Sanks Mora & Maire, P.A.

/cqmcleod/

Christine Q. McLeod  
Attorney for Opposer

Dated: March 17, 2010

# CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was emailed to Applicant on **March 17, 2010**, by agreement.

/cqmcleod/  
Christine Q. McLeod